

REMARKS

The re-issuance of the Office Action of December 20, 2006 with a new date for response is appreciated.

An Interference between applicant Hodgen's 5,468,736 and this application is not desired. Accordingly, all claims have been amended above so as to be directed to the combination of estrogen and progestin in HRT. The '736 patent explicitly is limited to the use of estrogen in the absence of progestin. Accordingly, all pending claims in this application are both novel and unobvious, even assuming the '736 patent was prior art.

While it is believed that the foregoing has placed this case into condition for allowance, the following paragraphs are presented to preserve Applicants' rights should further proceeding become necessary.

The Office Action is traversed as premature. It is Office policy not to declare an Interference until all claims have been found patentable and also if the interfering cases are owned by the same party (absent special circumstances). Neither is present here. The claims (before this amendment) in the present application and in copending applications 08/115,008 and 08/462,705 were substantial duplicates and therefore not all claims in this case were in condition to be allowed at the time the requirement was made. Further, this application is now owned by the '736 patent's assignee.

The Office Action refers to communications suggesting an Interference which were made in 2002 and 2003, but then requires compliance with a rule (37 CFR 41.202) which was not in existence at that time. It is respectfully submitted that such compliance is not required under such circumstances.

The Office Action states that extensions of time under 37 CFR 1.136 are not available to the response to that Action. It is respectfully pointed out that none of the exceptions to the availability of extensions set forth in 37 CFR 1.136(a)(1) are operative in this application. The MPEP section cannot eliminate extension rights which are provided for in the Rules.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Dated: February 22, 2007

Respectfully submitted,

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